

SENATE BILL NO. 378

INTRODUCED BY B. TASH

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT TO SPECIFICALLY AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COLLECT INTEREST ON PAST-DUE REMEDIAL ACTION COSTS AND TO DEPOSIT THOSE FUNDS INTO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 75-10-704 AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund; ~~and~~

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or

actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

Section 2. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs, including interest and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the

department within 60 days after receipt of notice that the costs and penalties are due, the department shall:

~~(a) assess and collect interest on the unpaid amount at the rate provided for in 25-9-205; and~~
~~(b)~~ bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) IF THE DEPARTMENT PROVIDES A NOTICE THAT THE STATE'S REMEDIAL ACTION COSTS ARE DUE, THE DEPARTMENT SHALL ASSESS AND COLLECT INTEREST ON THE UNPAID AMOUNT AT THE RATE PROVIDED FOR IN 25-9-205:

(A) AFTER 60 DAYS OF RECEIPT OF THE NOTICE IF THE NOTICE COVERS COSTS INCURRED DURING A TIME PERIOD THAT IS ONE-QUARTER OF A YEAR OR LESS;

(B) AFTER 90 DAYS OF RECEIPT OF THE NOTICE IF THE NOTICE COVERS COSTS INCURRED DURING A TIME PERIOD THAT IS MORE THAN ONE-QUARTER OF A YEAR AND LESS THAN OR EQUAL TO ONE-HALF OF A YEAR; AND

(C) AFTER 120 DAYS OF RECEIPT OF THE NOTICE IF THE NOTICE COVERS COSTS INCURRED DURING A TIME PERIOD THAT IS MORE THAN ONE-HALF OF A YEAR.

~~(4)(5)~~ An action to recover remedial action costs AND INTEREST may be brought under this section at any time after any remedial action costs AND INTEREST have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs AND INTEREST that is binding on any subsequent action or actions to recover further remedial action costs AND INTEREST. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. THE COURT MAY DISALLOW THE ASSOCIATED INTEREST IF IT DETERMINES, BASED ON THE RECORD, THAT THE CHALLENGE OF THE COSTS BY THE LIABLE PERSON WAS REASONABLE.
LIABLE PERSON CAN SHOW THAT THE COSTS ARE NOT REASONABLE.

~~(5)(6)~~ An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

~~(6)(7)~~ Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."

NEW SECTION. SECTION 3. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT CLAIMS, RIGHTS, AND DUTIES THAT MATURED OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

1 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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3 NEW SECTION. SECTION 5. APPLICABILITY. THE REQUIREMENT TO ASSESS AND COLLECT INTEREST IN

4 [SECTION 2], AMENDING 75-10-722, APPLIES TO INTEREST ACCRUED AFTER [THE EFFECTIVE DATE OF THIS ACT].

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